IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S) No. 6211 of 2007

.....

Shiv Nandan Mishra .... Petitioner

Versus

1. The State of Jharkhand
2. The Director Secondary, Human Resources Development Department Telephone Bhawan Dhurwa, Ranchi Jharkhand
3. Regional Dy. Director, North Chotanagpur Division, Hazaribagh Jharkhand
4. District Education Officer, Hazaribagh
5. Head Mistress State steptized gril school, Ramgarh Cant., P.O & PS - Ramgarh Dist. Ramgarh

.... Respondents

CORAM: HON'BLE MR. JUSTICE DR. S.N. PATHAK

For the Petitioner : Mr. K.K. Ojha, Advocate
For the Respondents : Mr. Ravi Kerketta JC to SC (L&C)
For the Intervenor : Mr. Sadab, Advocate

02/ Dated 21st June , 2017

I.A. No. 588 of 2008

Mr. Sadab, learned counsel appearing on behalf of Intervenor, submits that the intervenor petition has been preferred by intervenor for being added as a party - respondent in the present writ petition and further submits that an open advertisement should be done in view of the appointment to the said post and should not be filled up illegally.

The intervener-petitioner has no *locus-standi*. It is outlook of the State to advertise or not to advertise or to appoint or not to appoint. The intervenor cannot dictate the State to come with a particular advertisement.

In view of the above, I.A. NO. 588 of 2008 stands dismissed.

W.P.(S) No. 6211 of 2007

Heard the parties.

Mr. K.K. Ojha, learned counsel for the petitioner and Mr. Ravi Kerketta, learned JC to SC (L&C).

Factual Matrix.

Petitioner has approached this Court with a prayer to pay his salary in regular pay scale w.e.f 01.12.1994 meant for the post of Peon and treat him as a regular employee of Rajya Samposhit Balika Uccha Vidyalaya. It is a case of the petitioner that he was appointed

on the post of Peon in the year 1994 following legal procedure. After appointment his service was regularized on 15.3.1996 (Annexure-3 of the writ petition). It is case of the petitioner that all of a sudden he was removed from the service and his salary was stopped from 12.02.2008. Hence, this writ petition has been preferred.

Mr. K.K. Ojha, learned counsel for the petitioner strenuously urges that though appointment of the petitioner was made following the procedures and he worked for 20 long years and on 12.02.2008 his salary was stopped and he was ousted from the job. Learned counsel for the petitioner submits that only on the basis of verbal order salary of the petitioner has been stopped and neither any show cause notice was issued nor any departmental proceeding has been initiated against him. It has also been submitted that no committee was constituted and even no charges were framed against the present petitioner.

Mr. Ravi Kerketta, JC to learned SC (L & C) vehemently opposes the prayer of the petitioner. Learned counsel for the respondents submits that there is no need to follow the procedure adhering to departmental proceeding and also no need to issue any show cause notice as the appointment of petitioner was itself fake. In case of forged appointment even show cause is not required. The entire documents annexed in the writ petition are forged and fabricated and as such respondents are justified in removal of the petitioner.

Be that as it may, having gone through rival submissions of the parties, this Court is of the considered view that several persons are waiting even for appointment to the post of Peon. Regular procedures should have been adopted for appointment. Back door entries cannot be appreciated. Hon'ble Apex Court in the case of ***State of U.P & Ors. Vrs. U.P. State Law Officers' Association & Ors.*** reported in ***1994(2) SCC 204,*** while dealing with the back door entries in public appointment, observed as under:

> "*19*. … The method of appointment is indeed not calculated to ensure that the meritorious alone will always be appointed or that the appointments made will not be on considerations other than merit. In the absence of guidelines, the appointments may be made purely on personal or political considerations, and be arbitrary. This

being so *those who come to be appointed by such arbitrary procedure can hardly complain if the termination of their appointment is equally arbitrary. Those who come by the back door have to go by the same door. ...* From the inception some engagements and contracts may be the product of the operation of the spoils system. There need be no legal anxiety to save them."

(emphasis supplied)

However, in the instant case the petitioner has worked for 20 long years and in the year 2008 his salary was stopped.

In the facts and circumstances of the case, I hereby direct the Deputy Commissioner, Ramgarh to enquire into the matter personally. On enquiry if appointment of the petitioner is found to be genuine, let all the benefits be extended to him including arrears of salary for the period in which he has worked. If it is found that his appointment is not as per rules, action be taken against the person who has appointed him dehorse rule. As the petitioner has already been ousted from the service, no further order is required.

Let entire exercise be conducted within a period of twelve weeks from the date of order.

With the aforesaid observations, this writ petition is disposed of.

(Dr. S.N. Pathak, J.)

RC/Anjali/-